Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	

COMMENTS OF MEDIAONE GROUP, INC.

Pursuant to the Further Notice of Proposed Rulemaking in this proceeding,[1] MediaOne Group (MediaOne) submits these Comments. Here, we provide our view of the Commission's proposal to implement a utilization threshold for certain carriers. While we believe the Commission's proposal generally has it right, we suggest some minor changes. More important, we explain why the Commission must have in place a process that will enable carriers to obtain numbers, regardless of their utilization, if they can reasonably demonstrate that they will run out of numbers before the normal processes would enable them to get a new supply.

MediaOne also provides its view of the Commission's proposal to implement a "market-based" method of allocating numbering resources. Because there is no "market" for numbers, we do not believe the Commission can use market forces to allocate their distribution. Regulators – not market forces – dictate the supply of numbers, so any charge imposed for the use of numbers is, in reality, a regulatory device. If the Commission chooses to charge for the use of numbers, it must impose those charges on all numbers used by a carrier and not merely on newly-obtained numbers. Otherwise, the effect will fall disproportionately on new competitive entrants.

[1] Numbering Resource Optimization, CC Dkt. No. 99-200, Report and Further Notice of Proposed Rulemaking (Rel. March 31, 2000), paras. 247-59.

The Commission's examination of the issues in the Further Notice takes place against a background where the lack of phone numbers still stifles competition. In California, MediaOne's completed facilities could not be utilized to serve customers, solely because of a lack of numbers.[2] Only by sharing numbers with other carriers has it begun to market service. In April 2000, the Massachusetts Department of Telecommunications and Energy (DTE), ordered area code relief to be implemented in May 2001 in four NPAs. Significantly, while the Massachusetts DTE recognized the parallel between the availability of numbers and the ability of carriers to compete, as well as the vibrancy such demand reflects on the economy, it determined it was not in a position to order any interim relief.[3]

In both markets, there is no assurance that MediaOne will have access to numbers to market and provide services to customers. The availability of numbers in California for the third quarter of 2000 remains problematic. In Massachusetts, while implementation of the area code overlay has been ordered, all four area codes involve regions presently subject to industry rationing. Notably, Massachusetts recognized that the area codes at stake are so depleted to preclude thousands block number pooling. MediaOne cannot depend on numbers being available so that its completed investment in both California and Massachusetts can provide service. While utilization formats, proposals to auction numbers, and the method to allocate costs are important, the continued lack of phone numbers remains a critical problem. The present ad hoc

[2] See *Ex Parte* submission, dated February 10, 2000 to Magalie Roman Salas, Secretary, Federal Communications Commission from Susan M. Eid, Vice President, Federal Relations, The MediaOne Group, Inc. *et al.*

[3] Petition of Lockheed Martin IMS, the North American Numbering Plan Administrator, for area code relief for the 508, 617, 781, and 97 area codes in Eastern Massachusetts, Massachusetts

means of addressing the number shortage is not adequate. The record should reflect the result – competition has been and continues to be thwarted.

I. IF THE COMMISSION CHOOSES TO IMPOSE A NUMBER UTILIZATION THRESHOLD FOR CARRIERS TO OBTAIN ADDITIONAL NUMBERING RESOURCES, IT MUST PROVIDE A "SAFETY NET" TO ENSURE THAT CARRIERS DO NOT RUN OUT OF NUMBERS.

In the Further Notice (para. 248), the Commission has sought comment on the appropriate number utilization threshold to impose on carriers seeking new numbering resources; the threshold would apply only to carriers not participating in thousands-block pooling. The Further Notice tentatively concludes that the Commission should initially set the threshold at 50%, increasing it to 80% over a period of three years. A carrier seeking numbering resources would need to meet the threshold for the specific rate center in which it seeks numbers.

A. The Commission's Threshold Proposal Requires Some Modification.

MediaOne believes the Commission's proposal is on the right track, as far as it goes, but requires slight modification. Below, we discuss an added "safety net" that will ensure carrier's ability to obtain numbers in a timely fashion.

The Commission clearly has it right in proposing to measure utilization by rate center. This only makes sense, given that number blocks (whether central-office blocks of 10,000 numbers, or thousands blocks) are assigned by rate center and usable only within the rate center

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Department of Telecommunications and Energy, DTE 99-11, DTE 99-99 at Part III (April 25, 2000).

to which they relate. Measuring utilization at, say, the NPA level, would inevitably lead to anomalous, anti-competitive results. A carrier with high utilization throughout the NPA could get numbers in any rate center within the NPA, whether it needs them or not, while a carrier with an overall low utilization across the NPA might be unable to obtain numbers in a rate center where its inventory has reached total exhaustion. Measuring utilization at the rate-center level precludes such inequities. In this regard, the Commission's proposal is clearly correct.[4]

MediaOne is less convinced, however, of the need to phase in the utilization threshold. As noted, the Further Notice proposes to set the threshold at 50%, and then increase it to 80% over three years. Elsewhere, the Commission suggested that a stair-stepped threshold would "provide carriers time to adjust to the new requirements, and to improve their utilization performance over time."[5] MediaOne sees no need for such an approach. Given the reporting requirements the Commission has now imposed,[6] carriers are obligated to know what numbering resources they have available to them. Complying with a utilization requirement means only that they must wait to meet the threshold before requesting more numbers. Nothing obviously precludes carriers from immediate compliance with the threshold, whatever its level.[7]

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[4] The Commission also should not deviate from its decision to adopt a single, nationwide threshold. Id., para. 115 Requiring or permitting different thresholds would lead to confusion and most likely to inequity.

[5] Id., para. 112.

[6] Id., paras. 37-84.

[7] As to the appropriate threshold level, MediaOne believes that a utilization threshold of 70%-80% appears too high. The Commission should consider the needs and circumstances of the carriers (primarily wireless providers) who will be subjected to the threshold in light of the change the Commission adopted in the way in which it will determine utilization. Id., para. 109. Under the Commission's methodology, utilization will be equal to the quantity of assigned numbers divided by the total quantity of numbering resources assigned to the carrier. Because not all

B. The Commission Must Ensure That Carriers In Need Of Numbers Can Timely Obtain Them, Regardless Of Their Utilization Of Existing Resources.

In addressing the issues raised in the Further Notice, the Commission must ensure that "consumers are never foreclosed from exercising their choice of carrier because that carrier does not have access to numbering resources."[8] In an increasingly competitive market for local service, the implementation of a utilization threshold must afford carriers – particularly the new entrants with no base of numbers – sufficient flexibility to obtain numbers in time to serve new markets and to meet rapidly rising demand for their services. In deciding whether to serve a new market, or to expand its service in a market it already serves, a local carrier should not have to consider whether it will have the necessary numbers to do so.

MediaOne raises these concerns because it has faced – and continues to face – this very situation in several of its markets. That is, even though MediaOne was fully ready to launch its local telephone service in several rate centers, it was unable to do so for many months simply because it had no numbers in those rate centers. While these problems did not arise from a utilization threshold, an inflexible threshold that provides carriers no "safety valve" to meet demand surges can produce the same results.

If the Commission were to implement a rigid utilization threshold, affected carriers would be precluded from *applying for* additional numbers until they meet the threshold. Those numbers,

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unassigned numbers are available for assignment, a high threshold would likely leave carriers perilously close to exhaust by the time they reach that threshold. Given this, a 70% to 80% threshold seems high.

[8] Numbering Resource Optimization, supra., para. 171.

however, do not become instantly available to the applying carrier. Once the carrier has been awarded the code, it cannot yet be used for 66 days. A carrier with a single code could find itself having to ration 2,000 numbers for over two months. If any sort of code rationing is in place, the time can become much greater.[9]

In order to prevent this problem, the Commission must implement an appropriate safety valve that will enable a carrier to apply for additional numbering resources if it can demonstrate that it will likely run out of numbers altogether within the interval necessary to obtain additional resources by means of the usual processes. Specifically, if a carrier reasonably demonstrates that it will completely exhaust its inventory within six months, it should be granted additional resources, regardless of its utilization percentage within the rate center. Nor should a carrier be required to file absolute proof of its need in these cases; a months-to-exhaust projection – like any forecast – will seldom be exact and can never be "proven" in advance. The reporting requirements implemented by the Commission will enable the detection of grossly inaccurate projections, which can then be dealt with accordingly. Moreover, the Commission has authorized many states to undertake number-reclamation efforts, which will enable the states to recapture numbers improperly obtained by means of such inaccurate projections.

[9] These problems could become even worse if the Commission were to apply such a utilization threshold to the pooling carriers. A carrier with a single thousands block in a rate center would have no more than 200 numbers in its inventory at the time it becomes eligible to seek additional numbers. While the time needed to obtain a thousands block (ordinarily, 28 days) is typically shorter than the time needed to obtain a new code, it could still bring a small carrier perilously near – or all the way to – complete exhaust.

Absent this, or some other safety valve, a utilization threshold will likely cause some carriers to run out of numbers altogether, thus frustrating their growth and limiting consumer choice.

II. THE COMMISSION SHOULD NOT ATTEMPT TO CHARGE FOR NUMBERS, BUT IF IT DOES, IT MUST CHARGE CARRIERS FOR ALL NUMBERS THEY USE, NOT MERELY FOR NEW NUMBERS RECEIVED.

The Further Notice seeks comment on a "market-based allocation system for numbering resources," specifically, requiring carriers to pay for numbers.[10] MediaOne believes the Commission should not adopt such a plan, but if it does, it must apply the charges to all the numbers in use by a carrier, and not merely to newly-acquired numbers.

To begin, a substantial question exists whether the Commission has the authority to charge for numbers. While section 251(e) of the Communications Act[11] gives the Commission jurisdiction over the North American Numbering Plan, nothing in that section (or elsewhere in the Act) gives the Commission the power to charge carriers for the use of numbers. By contrast, section 309(j)[12] expressly requires the Commission to auction radio spectrum, thus suggesting the intent of Congress to grant such authority expressly, or not at all.

Even assuming the Commission has the requisite authority to charge for numbers, MediaOne believes doing so would be a bad idea. Merely charging for the use of a commodity is not a "market-based" solution when there is no real market for the commodity. And that is surely he case with numbers. If the Commission were to let the "market" set the prices for numbering resources (*e.g.*, by auctioning them off to the highest bidders), that price would be determined by

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[10] Id., paras. 250-51.
[11] 47 U.S.C. §251(e).

supply and demand. But the supply of numbers is strictly controlled by the Commission and state regulators. Any price thus determined is not a "market" price; it is a regulatory price, which will vary tremendously as regulators make additional resources available. Carriers who require numbers at a time when they are scarce will pay dearly, while those who need them, say, just after area-code relief takes effect will pay relatively very little. Moreover, in areas facing a scarcity of numbers, carriers with the resources to do so would likely buy up all the numbers they can, whether they need them or not. The other carriers – more likely the new entrants – will face the grim alternatives of doing without numbers or paying their competitor monopoly prices for them – if the competitor will sell them at all. Any rules the Commission might impose to ameliorate these difficulties would simply move the process further from any notion of a "market-based" allocation system.

The proposal to charge carriers for numbers carries an implicit assumption that carriers today pay nothing for numbering resources. That is not the case. While the Commission does not charge carriers for numbers, the North American Numbering Plan Administrator, NeuStar, collects certain fees from carriers whenever they obtain new numbering resources.[13]

If, despite these drawbacks, the Commission chooses to implement charging for numbers, it must take pains to ensure that such charges do not disproportionately impact the new competitive entrants. Specifically, the Commission must charge carriers for all the numbers they

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[13] Indeed, new competitive entrants often face an additional "cost" under the present system whenever a lack of numbering resources precludes them from entering a new market or expanding

use, not merely for the new numbers they obtain. Charging only for new numbers will hit much harder on a new entrant with a small, but rapidly growing customer base than it will on an incumbent. Thus any such charge must fall on all numbers in use by a carrier or in its inventory. Any other result will stifle competition.

CONCLUSION

The Commission is faced with a delicate balancing act. It must continue to implement steps to ensure the efficient use of numbering resources, while ensuring that carriers continue to have the numbers they need to enter new markets and serve their existing markets. While a utilization threshold will advance the cause of efficiency, the Commission should add a safety valve, as described in these Comments, so that the threshold does not also stifle competition by depriving carriers of numbers. Charging for numbers, in our view, advances neither goal and

its existing markets. MediaOne has indeed faced – and continues to face – that situation in several probably undermines both of them. In any case, if the Commission chooses to charge for numbers, it must charge for all numbers used by a carrier or in its inventory. Otherwise, new competitive entrants will be disproportionately impacted, thereby stifling competition.

Respectfully submitted,

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The MediaOne Group, Inc., Comments, CC Docket No. 99-200, May 19, 2000.

On May 19, 2000, I caused to be delivered the original and copies of the above Comments of the MediaOne Group, Inc., to the following individuals:

Magalie Roman Salas, Secretary (original and four copies)*

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Mr. L. Charles Keller, Chief, Network Service Division*

Ms. Diane Harmon, Deputy Chief, Network Services Division*

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